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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,611	07/27/2001	Greg Volgas	HCC-011 (306*142)	8709

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EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 02/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/916,611

Applicant(s)

Bartlett et al

Examiner

Alton Pryor

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Dec 17, 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-91 is/are pending in the application.
- 4a) Of the above, claim(s) 3-7, 10, 11, 13-17, 20-27, 30-32, 34-36, 41-43, 51 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 8, 9, 12, 18, 19, 28, 29, 33, 37-40, 44-49, 53, 66, 69, 72, 74-81 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 3 6) ☐ Other: \_\_\_\_\_

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***Duplicate Claim Warning***

Applicant is advised that should claim 1 be found allowable, claims 37-39 will be objected to under 37 CAR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

***Misnumbering of Claims***

Applicant has two claims numbered as claim 78 and two claims numbered as claim 84.

***Claim Rejection under 35 U.S.C. 103(a)***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1,2,8,9,12,18,19,28,29,33,37-40,44-48,49,53,66,69,72,74-81,86-90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berger et al (US 6121200; 9/19/00). Berger teaches a herbicide composition comprising a surfactant in a concentration range of about 5 to about 25% of the total weight of the composition. Berger teaches that the composition can comprise a number of herbicides including 2,4-D (2,4-dichlorophenoxy acetic acid - a chlorinated

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carboxylic acid herbicide) in a concentration range of about 5 to about 85% of the total weight of the composition. Berger teaches that the lower limit of surfactant concentration and the lower limit of 2,4-D concentration are equal, i.e., both are 5% at the lower end of the concentration range meaning that the concentration of 2,4-D is 50% and surfactant is 50%. Berger's herbicidal compositions do not comprise plant or animal oils. See abstract, column 10 line 35 - column 11 line 58, claims 1,7-9. Berger teaches all that is recited in the instant claims except for an example wherein the 2,4-D and the surfactant are in equal amount or the surfactant is in a greater amount than the 2,4-D. However, Berger's concentration ranges of 2,4-D and surfactant overlap which means that Berger does suggest a composition wherein the concentration of surfactant is at least equivalent to the concentration of 2,4-D at a point. In fact Berger teaches that the lower limit of surfactant concentration and the lower limit of 2,4-D concentration are equal, i.e., both are 5% at the lower end of the concentration range. Therefore it would have been obvious to one having ordinary skill in the art to make the instant invention comprising equal quantities or concentrations of the surfactant and 2,4-D since the prior art suggests such composition. One having ordinary skill in the art would have been motivated to do this in order to develop a composition that would have been most effective at controlling the growth of weeds and other vegetation.

### *Election*

The Elected composition comprising at least equal quantities of 2,4-D and C11 alcohol ethoxylate was searched and is allowable.

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***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for this Group is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

**ALTON N. PRYOR  
PRIMARY EXAMINER**

Alton Pryor

Primary Examiner, AU 1616

2/5/03